In the Supreme Court of the United States

OCTOBER TERM, 1924

DOULLUT & WILLIAMS COMPANY (Inc.) v. UNITED STATES OF AMERICA	Nos. 317 and 318

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA SITTING IN ADMIRALTY

BRIEF FOR THE UNITED STATES

I

STATEMENT

Although separate appeals have been perfected, the pleadings and proofs in each of these cases are identical. Our reference to transcripts of record relate to either transcript, as the paging is substantially the same.

Libels were filed to recover damages for injuries inflicted by Government merchant vessels to clusters of piling located in the Mississippi River at

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New Orleans. These clusters are described by the libels (R. page 1) as—

> Said piling cluster consists of five wooden piles or timbers, each of approximately 60 feet in length, *firmly driven in and attached to the bottom of the river,* fastened and held together as a unit having a diameter of not more than 4 feet, the depth of the water surrounding them being at all times not less than 16 feet, said pile cluster extending perpendicular of about 25 feet out of and above the water. (Italics ours.)

The Government filed its answer denying jurisdiction. The matter was heard by the district court upon pleadings and proof, and the court, without opinion, entered decrees dismissing the libels for want of jurisdiction. From these decrees appeals to this court have been perfected.

The district court undoubtedly adopted its opinion filed in the case of *The Southern Lighterage and Wrecking Company* v. *The United States* (284 Fed. 978) as its authority. An appeal taken in that case to this court (No. 60, October Term, 1922) was affirmed by an equally divided court. (260 U. S. 699.)

II

THE FACTS

The photographs of the clusters of piling damaged are inserted in the record at page 20 and define their physical appearance and their general location in the river. *These clusters of piling were popularly known as Doullut & Williams Landing.*

(R. page 6.) They are used primarily for tying up the plant of the appellant which consists of pile drivers, barges, and tugs. (R. pp. 13, 15.) Owners of similar plants, as a matter of general knowledge, usually tie up this equipment to the shore bulkhead or to wharves and piers which they may own. Piling constructions are not as expensive as bulkheads or wharves.

Some suggestions are made that the pilings serve as aids to navigation because vessels in coming up in foggy weather or at night when they see the clusters know they are near shore, and danger can be avoided. Trees, tall buildings, wharves, bulkheads and other landmarks are helpful in the same way. (R. pp. 8, 9, 20.) The pilings do not have lights at night and are not marked on Government charts as aids to navigation, nor are they dedicated to such uses. (R. pp. 8, 10, 13, 20.) The piling was placed by the appellant primarily for tying up their plant. (R. pp. 13, 15.) We are confident these clusters can not be characterized as aids to navigation within the meaning that governmental aid to navigation was used in *The Blackheath* (195 U. S. 361), and *The Raithmoor* (241 U. S. 166), cases. To the contrary, the clusters are used for tying up the floating plant, consisting of small vessels, when not in use, in just the same way that other owners tie up like equipment to bulkheads, docks and piers.

ARGUMENT

1

An examination of the cases decided by this court show that in order for a stationary structure to be the subject of admiralty jurisdiction, it must, first, constitute a governmental aid to navigation, and, second, be entirely detached from the shore.

The cases denying jurisdiction are: *The Plymouth*, 3 Wall, 20; *Cleveland Terminal and Valley Railroad Company* v. *Cleveand Steamship Company*, 208 U. S. 316; *The Troy*, 208 U. S. 321; *The Poughkeepsie*, 212 U. S. 558; *Martin* v. *West*, 222 U. S. 191; *Southern Lighterage and Wrecking Company* v. *United States*, 284 Fed. 978; affirmed by divided court 260 U. S. 699; *The United States* v. *The Panoil*, — U. S. — (decided February 2, 1925).

The cases determining that governmental aids to navigation are subject to admiralty jurisdiction are: *The Blackheath*, 195 U. S. 361; *The Raithmoor*, 241 U. S. 166. Damage done by ships to structures on or attached to the beds of navigable waters or land are not within admiralty jurisdiction, unless they are governmental aids to navigation.

These clusters of piling are stationary structures, firmly attached to the bottom of the river. Pier abutments and piling used for protection of pier abutments are similarly attached to the bed of the river. The real use they serve is for the tying up of barges, etc., when not in use. Such use is the

same as the owner of a shore abutment, pier or wharf would employ his property. Piling can not be defined a governmental aid or any aid to navigation in the sense in which the expression " aid to navigation " is used in *The Blackheath* and *The Raithmoor* cases.

2

Courts of admiralty have declined to take jurisdiction of injuries to the following objects on the ground that they were structures connected with land:

1. The surface part of borings made to locate an aqueduct under the bed of a river. *The Poughkeepsie,* 162 Fed. 494, affirmed in 212 U. S. 558.

2. A temporary staging or platform consisting of piles driven into the bed of a navigable river and used as a solid structure in connection with the drilling of test holes in the building of a channel or bridge. *United Engineering and Constructing Co.* v. *N. Y., N. H. and H. Tug Transfer No. 5,* cited in *The Poughkeepsie,* 162 Fed. 494.

3. A firmly fixed drilling platform standing in navigable waters, its four large legs with sharpened lower ends being driven like piles into the bed of a navigable river. *The Senator Rice,* 234 Fed. 101. The court stated the rule as follows:

> The rule apparently now well established is to the effect that a platform erected upon posts or piles and giving the character of a dock or land structure, even though entirely isolated from the land and standing in navi-

> gable water, is part of the land itself, and that acts occurring thereon are not within the admiralty jurisdiction. Nor was the mere fact that the drilling was being done in connection with the making of a channel for navigation sufficient of itself to treat this entire plant as an aid to navigation, as was the beacon or buoy in the case of *The Blackheath* * * * and in the recent case of *The Raithmoor.*

The appellant erroneously refers to the earlier decision in 212 Fed. 960 as laying down a contrary rule. (Appellant's brief, p. 3.)

4. Clusters of piling similar to the clusters of piling in question. *Southern Lighterage and Wrecking Co.* v. *The United States,* 284 Fed. 974 (affirmed by an equally divided court in 260 U. S. 699).

Our investigation has disclosed no American case in which the jurisdiction of admiralty was maintained over injury to any structure similar to these clusters of piling. Jurisdiction in admiralty only exists with respect to an injury to any structure attached to the bottom and surrounded by navigable waters where such structure is an aid to navigation. Location in or upon navigable waters is doubtless necessary, but if the structure is connected with the land (through the bottom or the shore) that location may be said to defeat jurisdiction unless the structure is distinctly an aid to navigation.

Aids to navigation include beacons, spar buoys, gas buoys, bell buoys, lighthouses, and light vessels arising out of navigable waters. They could hardly by any stretch of imagination comprehend clusters of piling, not marking a channel, but used for mooring of vessels. Such are identical to the uses to which bulkheads, pier, and wharf structures are devoted as we have suggested.

We refer to the briefs filed in this court in the case of *Southern Lighterage and Wrecking Company* v. *United States,* No. 60, October Term, 1922, at reviewing the exact questions presented by this appeal.

CONCLUSION

It is respectfully submitted that the appeal in each of these cases be dismissed.

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